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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 CHRISTINE M. MOEN,

7 Plaintiff,

8 v.

9 NANCY A. BERRYHILL, Acting
Commissioner of Social Security

10 Defendant.

Case No. 3:16-cv-05804-TLF

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

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12 Plaintiff has brought this matter for judicial review of defendant's denial of her
13 application for supplemental security income (SSI) benefits. The parties have consented to have
14 this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil
15 Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court finds that
16 defendant's decision to deny benefits should be reversed, and that this matter should be remanded
17 for further administrative proceedings.

18 FACTUAL AND PROCEDURAL HISTORY

19 On November 5, 2009, plaintiff filed an application for SSI benefits, alleging she became
20 disabled beginning February 27, 2007. Dkt. 12, Administrative Record (AR) 623. That
21 application was denied on initial administrative review and on reconsideration. AR 18. A hearing
22 was held before an administrative law judge (ALJ), at which plaintiff appeared and testified. AR
23 35-74.

1 In a decision dated February 15, 2012, the ALJ found that plaintiff could perform other
2 jobs existing in significant numbers in the national economy and therefore that she was not
3 disabled. AR 18-29. Plaintiff's request for review was denied by the Appeals Council, which
4 plaintiff then appealed to this Court. AR 1, 623. On March 26, 2014, based on the stipulation of
5 the parties, the Court remanded the matter to the Commissioner for further administrative
6 proceedings. AR 692-94.

7 On remand, another hearing was held before the same ALJ, at which plaintiff appeared
8 and testified, as did a vocational expert. AR 649-665. In a decision dated April 29, 2015, the ALJ
9 again found plaintiff could perform other jobs existing in significant numbers in the national
10 economy, and therefore that she was not disabled. AR 623-640. It appears the Appeals Council
11 did not assume jurisdiction of the matter, making the ALJ's decision the Commissioner's final
12 decision, which plaintiff appealed in a complaint filed with this Court on September 23, 2016.
13 Dkt. 3; 20 C.F.R. § 416.1481.

14 Plaintiff seeks reversal of the ALJ's decision and remand for further administrative
15 proceedings, arguing the ALJ erred:

- 16 (1) in evaluating the medical evidence, including the opinions of Robert E.
17 Schneider, Ph.D., M. Kristin Price, Ph.D., ; Daniel K. Beavers, D.O.,
18 Tobias A. Ryan, Psy.D., Donald D. Ramsthel, M.D., Gary Pape, M.D.,
19 Kye Park, M.D., Cynthia Collingwood, Ph.D., and Bruce Eather, Ph.D.
- 20 (2) in discounting plaintiff's credibility;
- 21 (3) in rejecting the lay witness evidence;
- 22 (4) in assessing plaintiff's residual functional capacity ('RFC'); and
- 23 (5) in finding plaintiff could perform other jobs existing in significant
24 numbers in the national economy.

1 For the reasons set forth below, the Court agrees the ALJ erred in evaluating the opinion of Dr.
2 Ryan, and therefore in assessing plaintiff's RFC, in finding plaintiff to be capable of performing
3 other jobs, and in determining plaintiff to be disabled. Accordingly, the Court finds that the
4 decision to deny benefits should be reversed and that this matter should be remanded for further
5 consideration of those issues.

6 DISCUSSION

7 The Commissioner's determination that a claimant is not disabled must be upheld if the
8 "proper legal standards" have been applied, and the "substantial evidence in the record as a whole
9 supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986); *see also*
10 *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*,
11 772 F.Supp. 522, 525 (E.D. Wash. 1991). "A decision supported by substantial evidence
12 nevertheless will be set aside if the proper legal standards were not applied in weighing the
13 evidence and making the decision." *Carr*, 772 F.Supp. at 525 (citing *Browner v. Sec'y of Health*
14 *and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is "such relevant
15 evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v.*
16 *Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at 1193.

17 The Commissioner's findings will be upheld "if supported by inferences reasonably drawn
18 from the record." *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to determine
19 whether the Commissioner's determination is "supported by more than a scintilla of evidence,
20 although less than a preponderance of the evidence is required." *Sorenson v. Weinberger*, 514
21 F.2d 1112, 1119 n.10 (9th Cir. 1975). "If the evidence admits of more than one rational
22 interpretation," that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).
23 That is, "[w]here there is conflicting evidence sufficient to support either outcome," the Court "must
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1 affirm the decision actually made.” *Allen*, 749 F.2d at 579 (quoting *Rhinehart v. Finch*, 438 F.2d
2 920, 921 (9th Cir. 1971)).

3 I. The ALJ’s Evaluation of the Medical Opinion Evidence

4 The ALJ is responsible for determining credibility and resolving ambiguities and
5 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where
6 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions
7 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,
8 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595,
9 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or are in
10 fact inconsistencies at all) and whether certain factors are relevant to discount’ medical opinions
11 ‘falls within this responsibility.’” *Id.* at 603.

12 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings “must
13 be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this “by
14 setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating
15 his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences “logically
16 flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may draw “specific
17 and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881 F.2d 747, 755, (9th
18 Cir. 1989).

19 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted
20 opinion of either a treating or examining physician. *Trevizo v. Berryhill*, 862 F.3d 987, 997 (9th
21 Cir. 2017) (quoting *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)). Even
22 when a treating or examining physician’s opinion is contradicted, an ALJ may only reject that
23 opinion “by providing specific and legitimate reasons that are supported by substantial evidence.”
24 *Id.* However, the ALJ “need not discuss *all* evidence presented’ to him or her. *Vincent on Behalf of*

1 *Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation omitted) (emphasis in
2 original). The ALJ must only explain why “significant probative evidence has been rejected.” *Id.*;
3 *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield v. Schweiker*, 732 F.2d
4 605, 610 (7th Cir. 1984).

5 In general, more weight is given to a treating physician’s opinion than to the opinions of
6 those who do not treat the claimant. *See Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). On
7 the other hand, an ALJ need not accept the opinion of a treating physician, “if that opinion is
8 brief, conclusory, and inadequately supported by clinical findings” or “by the record as a whole.”
9 *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v.*
10 *Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
11 Cir. 2001). An examining physician’s opinion is “entitled to greater weight than the opinion of a
12 nonexamining physician.” *Lester*, 81 F.3d at 830-31. A non-examining physician’s opinion may
13 constitute substantial evidence if “it is consistent with other independent evidence in the record.”
14 *Id.* at 830-31; *Tonapetyan*, 242 F.3d at 1149.

15 A. Dr. Ryan, examining psychologist

16 Dr. Ryan, an examining psychologist, evaluated plaintiff in late January 2014, and
17 provided an opinion (quoted in relevant part) that Ms. Moen had “a moderate[ly] to severely
18 impaired ability to maintain a daily/weekly work schedule because of chronic pain.” AR 1107.
19 The ALJ gave “little weight” to this opinion because (1) “the effect of physical pain is not Dr. Ryan’s
20 area of expertise,” and (2) Dr. Ryan “based that statement on [plaintiff’s] subjective report, even
21 though [Dr. Ryan] discredited her judgment and insight.” AR 637.

22 Plaintiff asserts the ALJ erred; Ms. Moen argues that as a clinical psychologist, Dr. Ryan
23 was qualified to state his opinion about the observed effects of chronic pain on her ability to
24 function mentally. The Court agrees. The ALJ points to no authority for the proposition that a
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1 licensed psychologist cannot express an opinion concerning the effects of pain on mental
2 functioning, or that an acceptable medical source must be an expert in a particular area in order
3 to have an opinion about its effects. Nor does the record indicate Dr. Ryan necessarily relied on
4 plaintiff's subjective report as opposed to his own objective clinical findings in forming his
5 opinion. AR 1102-1107; *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014) ('[W]hen an
6 opinion is not more heavily based on a patient's self-reports than on clinical observations, there is
7 no evidentiary basis for rejecting the opinion.').

8 II. The ALJ's RFC Assessment

9 The Commissioner employs a five-step "sequential evaluation process" to determine
10 whether a claimant is disabled. 20 C.F.R. § 416.920. If the claimant is found disabled or not
11 disabled at any particular step thereof, the disability determination is made at that step, and the
12 sequential evaluation process ends. *Id.* A claimant's RFC assessment is used at step four of the
13 process to determine whether he or she can do his or her past relevant work, and at step five to
14 determine whether he or she can do other work. Social Security Ruling (SSR) 96-8p, 1996 WL
15 374184, at *2. It is what the claimant "can still do despite his or her limitations." *Id.*

16 A claimant's RFC is the maximum amount of work the claimant is able to perform based
17 on all of the relevant evidence in the record. SSR 96-8p, 1996 WL 374184, at *2. However, an
18 inability to work must result from the claimant's "physical or mental impairment(s)." *Id.* Thus, the
19 ALJ must consider only those limitations and restrictions "attributable to medically determinable
20 impairments." *Id.* In assessing a claimant's RFC, the ALJ also is required to discuss why the
21 claimant's "symptom-related functional limitations and restrictions can or cannot reasonably be
22 accepted as consistent with the medical or other evidence." *Id.* at *7.

23 The ALJ found plaintiff had the following mental RFC:

24 **She can sustain concentration, persistence, and pace for simple, routine,**

1 **repetitive work in a predictable work environment, with few – if any –**
2 **changes in the normal routine. She should have the opportunity to learn**
3 **tasks by visual or other demonstration, as opposed to a requirement of**
4 **mastering written materials. She can engage in brief, routine, normal**
5 **interaction with coworkers and supervisors.**

6 AR 628 (emphasis in the original). But because as discussed above the ALJ erred in failing to
7 properly evaluate the opinion of Dr. Ryan regarding plaintiff's ability to maintain a daily/weekly
8 work schedule, the ALJ's RFC assessment cannot be said to completely and accurately describe
9 all of her functional limitations. Accordingly, the ALJ erred here as well.

10 III. The ALJ's Step Five Determination

11 If a claimant cannot perform his or her past relevant work, at step five of the sequential
12 disability evaluation process the ALJ must show there are a significant number of jobs in the
13 national economy the claimant is able to do. *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir.
14 1999); 20 C.F.R. § 416.920(d), (e). The ALJ can do this through the testimony of a vocational
15 expert. *Osenbrock v. Apfel*, 240 F.3d 1157, 1162 (9th Cir. 2000); *Tackett*, 180 F.3d at 1100-1101.
16 An ALJ's step five determination will be upheld if the weight of the medical evidence supports
17 the hypothetical posed to the vocational expert. *Martinez v. Heckler*, 807 F.2d 771, 774 (9th Cir.
18 1987); *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984). The vocational expert's
19 testimony therefore must be reliable in light of the medical evidence to qualify as substantial
20 evidence. *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988). Accordingly, the ALJ's
21 description of the claimant's functional limitations "must be accurate, detailed, and supported by
22 the medical record." *Id.* (citations omitted).

23 The ALJ found plaintiff could perform other jobs existing in significant numbers in the
24 national economy, based on the vocational expert's testimony offered at the hearing in response
25 to a hypothetical question concerning an individual with the same age, education, work
26 experience and RFC as plaintiff. AR 639-640. But because as discussed above the ALJ erred in

1 assessing plaintiff's RFC, the hypothetical question the ALJ posed to the vocational expert—and
2 thus that expert's testimony and the ALJ's reliance thereon—cannot be said to be supported by
3 substantial evidence or free of error.

4 IV. Remand for Further Administrative Proceedings

5 The Court may remand this case “either for additional evidence and findings or to award
6 benefits.” *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court
7 reverses an ALJ's decision, “the proper course, except in rare circumstances, is to remand to the
8 agency for additional investigation or explanation.” *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th
9 Cir. 2004) (citations omitted). Thus, it is “the unusual case in which it is clear from the record that
10 the claimant is unable to perform gainful employment in the national economy,” that “remand for
11 an immediate award of benefits is appropriate.” *Id.*

12 Benefits may be awarded where “the record has been fully developed” and “further
13 administrative proceedings would serve no useful purpose.” *Smolen*, 80 F.3d at 1292; *Holohan v.*
14 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

15 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the
16 claimant's] evidence, (2) there are no outstanding issues that must be resolved
17 before a determination of disability can be made, and (3) it is clear from the
record that the ALJ would be required to find the claimant disabled were such
evidence credited.

18 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

19 Because issues still remain in regard to plaintiff's ability to maintain a daily/weekly work
20 schedule, her RFC, and her ability to perform other jobs existing in significant numbers in the
21 national economy, remand for further consideration of those issues is warranted.

22 CONCLUSION

23 Based on the foregoing discussion, the Court finds the ALJ improperly determined
24 plaintiff to be not disabled. Defendant's decision to deny benefits therefore is REVERSED and
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1 this matter is REMANDED for further administrative proceedings.

2 Dated this 20th day of September, 2017.

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6 Theresa L. Fricke
7 United States Magistrate Judge
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